UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOANE STONEBERG, *Plaintiff*	:	
	:	
v.	:	**Civil Action No. 4:17-CV-360**
	:	
THE PENNSYLVANIA STATE UNIVERSITY,	:	**Jury Trial Demanded**
	:	
Defendant	:	**Filed Via ECF**

COMPLAINT

I. Introduction

1. The plaintiff, Joane Stoneberg, brings this action against The Pennsylvania State University ("Penn State"), her former employer, seeking redress for violations of her right to a workplace free of gender discrimination, hostile work environment, sexual harassment and retaliation. For thirty years, Ms. Stoneberg provided Penn State with exemplary service, working her way up from part-time transcript clerk to the Division of Undergraduate Studies Programs Coordinator in the College of Arts and Architecture. During her last 8 years with the University, co-worker Curt Marshall, College of Arts and Architecture Coordinator of Multicultural Programs, infected her work place with sexually inappropriate and offensive comments, pictures, and propositions. Although Ms. Stoneberg complained about the harassment to one of the University's highest ranking officials charged with investigating and protecting students and employees from illegal discrimination, Penn State failed to take action to

provide her with a safe workplace free of discrimination. Instead, the University betrayed Ms. Stoneberg and violated the law by forcing her to move from the office suite she shared with the perpetrator and to leave the job she loved.

II. Jurisdiction and Venue

2. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Sections 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, ("Title VII"), 42 U.S.C. §§ 2000e-5(f)(1) and (3), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because the events giving rise to this claim occurred in Centre County, Pennsylvania, which is located within this judicial district.

III. Administrative Exhaustion

4. Plaintiff dual filed a timely discrimination charge with the United States Equal Employment Opportunity Commission and the Pennsylvania Human Relations Commission on or about November 6, 2014. Plaintiff received a Notice of Right to Sue from the EEOC dated January 18, 2017.

IV. Parties

5. The Plaintiff is Joane Stoneberg, an adult female who for thirty years and at all times relevant to this complaint, was a Pennsylvania State University employee and who currently resides in Reisterstown, Maryland.

6. The Defendant is The Pennsylvania State University ("Penn State"), a nonprofit corporation organized under the laws of the Commonwealth of Pennsylvania, with its principal place of business at 201 Old Main, University Park, Pennsylvania 16802.

V. Background

7. At all relevant times, Penn State employed Curt Marshall, the person who infected Ms. Stoneberg's workplace with sexually offensive comments and conduct, as its Coordinator of Multicultural Programs within the College of Arts and Architecture.

8. From 2008 – 2014, Penn State employed Gary Kesler as its Associate Dean in the College of Arts and Architecture. During that time period, Curt Marshall reported directly to Mr. Kesler as did Ms. Stoneberg, who also reported to a supervisor within the Division of Undergraduate Studies.

9. At all relevant times, Penn State employed Kenneth Lehrman, III, as a Vice Provost, responsible for leading its Affirmative Action Office, an office charged with responding to and investigating allegations of illegal discrimination.

VI. Facts

10. In November of 1984, Penn State hired Ms. Stoneberg as a part-time "wage payroll" employee in the Transcripts Department. She was promoted to a full-time position in November 1985 as Staff Assistant in the Board of Trustees Office.

11. In 1994, Ms. Stoneberg began working in the College of Arts and Architecture as an Assistant to the Department Head in the School of Theatre where she became an academic advisor for the Bachelor of Arts program. She became the academic advisor for the School of Visual Arts (within the College of Arts and Architecture) in 2005.

12. In November 2006, Ms. Stoneberg was promoted to Division of Undergraduate Studies (DUS) Programs Coordinator in the College of Arts and Architecture. Although the position was funded by DUS, Ms. Stoneberg's office was located in the College of Arts and

Architecture and she reported to then Associate Dean of Undergraduate Studies and Outreach, Yvonne Gaudelius.

13. As DUS Program Coordinator in the College of Arts and Architecture, Ms. Stoneberg's job responsibilities consisted of serving as primary coordinator for the support of all academic advising activities in the College, administering summer orientation programs for the College, serving as Admissions Representative and monitoring undergraduate applications, and advising a small roster of DUS students with specific interests in the College's majors. Her committee assignments included: Chair, DUS Programs Coordinator Network; Chair, Search Committee for DUS Programs Coordinator in the College of Engineering; Co-chair, Central Course Scheduling Committee; University Advising Council; University Enrollment Management Conference Planning committee; Excellence in Advising Award committee; Bunton-Waller Fellowship committee; DUS Fall Conference Planning committee; eLion Advising Team, and eLion Registration Modernization committee.

14. The promotion required that Ms. Stoneberg move to an office suite within the College of Art and Architecture which she shared with Curt Marshall, Coordinator of Multicultural Programs, and others. Ms. Stoneberg was required to work with Marshall on issues relating to minority admissions, recruitment and orientation.

15. In November of 2008, Gary Kesler was appointed to Associate Dean position in the College of Arts and Architecture. Mr. Kesler directly supervised Ms. Stoneberg and Mr. Marshall.

16. From on or about November of 2006 through June of 2014, when defendant Penn State forced Ms. Stoneberg to move her office, Mr. Marshall polluted Ms. Stoneberg's work environment by: consistently making offensive and inappropriate sexual comments directly to

her or in her presence; forwarding her sexually inappropriate emails; sexually propositioning her, and; commenting on her looks.

17. Mr. Marshall's inappropriate behavior began within weeks of Ms. Stoneberg's move to the shared office suite when Mr. Marshall shared intimate details about his marital sex life during two work lunches.

18. Another representative incident occurred in May of 2007 when Mr. Marshall stopped Ms. Stoneberg (who was then a smoker) as she went outside to smoke a cigarette telling her (referring to his penis), "I can think of something better that you can put your mouth around."

19. In 2008, Mr. Marshall propositioned Ms. Stoneberg telling her that he was always ready to have sex.

20. In October of 2009, Mr. Marshall called Ms. Stoneberg into her office when they were alone in the office suite and showed her a picture on his computer of a t-shirt with an erect penis coming out of the shorts.

21. On November 3, 2009, Ms. Stoneberg met with her then Human Resource representative Joseph Mativi (now deceased) about Marshall's conduct and submitted a written narrative detailing Marshall's sexual harassment and gender discrimination.

22. As a courtesy, Ms. Stoneberg advised Mr. Kesler of the meeting with Mr. Mativi and her intention to pursue a sexual harassment complaint against Mr. Marshall. Kesler urged her not to continue with the formal complaint process and instead, to let him informally handle it. Ms. Stoneberg reluctantly agreed fearing that crossing her new supervisor would be professionally harmful.

23. Shortly after her discussion with Mr. Kesler, Mr. Marshall confronted Ms. Stoneberg in her office and said: "I guess I have to apologize, I know I shouldn't have done it (referring to the t-shirt penis image) but I was in such a great mood--I did it anyway."

24. Following this incident, and given the manner in which Mr. Kesler "handled" her complaint, Ms. Stoneberg spent the next 5 years avoiding Mr. Marshall as best she could. He continued making inappropriate sexual jokes and discriminatory comments in her vicinity although not directly to her.

25. In February and March of 2014, Mr. Kesler was seriously ill and out of the office. Absent any supervision, Mr. Marshall quickly returned to his offensive behavior and on two occasions, hugged Ms. Stoneberg in front of her coworkers.

26. Ms. Stoneberg initiated a sexual harassment complaint against Marshall. On March 20, 2014, Ms. Stoneberg reported the recent harassment and history, to Associate Vice President and Senior Associate Dean of Undergraduate Education Yvonne Guadelius, who was familiar with Mr. Marshall from when she supervised him. Ms. Guadelius responded by suggested that Ms. Stoneberg call a newly rolled-out sexual harassment "hotline."

27. In late March 2014, after unsuccessfully trying to use the "hotline" (which was for students not staff), Ms. Stoneberg lodged her sexual harassment complaint directly with Kenneth Lehrman, III, Vice Provost for Affirmative Action. According to Penn State's web site, the Affirmative Action Office is where "[a]ny member of the University community who experiences sexual harassment should immediately report the incident . . . . to discuss resolution and ensure consistent responses to issues across units."

28. From April 8, 2014 to June 2, 2014, Ms. Stoneberg was off from work on Family Medical Leave.

29. On April 14, 2014, Ms. Stoneberg met with Vice Provost Lehrman to discuss the harassment. Vice Provost Lehrman told Ms. Stoneberg that Marshall would be required to take a sexual harassment class and that she could elect to move to a basement office or request that Mr. Marshall be moved there.

30. On May 29th, four days prior to Stoneberg's return from FMLA leave, she informed her DUS supervisor David Smith who in turn notified Vice Provost Lehrman that she wished to return to her office and requested that Marshall be moved from the office suite.

31. When she returned to work on June 2nd, Ms. Stoneberg learned that Mr. Kesler had not moved Marshall.

32. During a June 4, 2014, meeting, Mr. Kesler asked Ms. Stoneberg if he would "really have to move" Marshall. When Ms. Stoneberg said "yes," Kesler told her that "there was no timeline" for the move.

33. In view of Mr. Kesler's refusal to move Mr. Marshall from the office suite, Ms. Stoneberg was forced to "temporarily" relocate to another building.

34. She advised her DUS supervisor, Associate Dean for Advising and Executive Director David R. Smith, that she was considering leaving the University in view of Penn State's refusal to move Marshall or even promise to do so.

35. On June 16, 2014, Mr. Smith created a "new" position for Ms. Stoneberg so that she could remain employed. Ms. Stoneberg's "new" position represented a significant diminution of her job description stripping her of the high-level responsibilities she had mastered and excelled at within the College of Arts and Architecture where she had worked since 1994. Her new job was an entry level advising position.

36. As College of Art and Architecture Programs Coordinator, Ms. Stoneberg chaired and co-chaired university committees, participated in high level admissions decisions, ran the College's new student orientation, and organized its academic advising. Commensurate with the position's importance, the College provided Ms. Stoneberg with her own staff, a private office, and access to administrative support resources. The new position was a job she performed at the beginning of her career -- providing academic advising to undergraduates and working during the summer new student orientation—and being forced to take the job was humiliating, embarrassing, and demeaning to her.

37. Within days of the "reassignment," Ms. Stoneberg complained to Vice Provost Lehrman about being forced to move following the filing of her sexual harassment complaint. By email dated June 20, 2014, Ms. Stoneberg requested that there be "follow up . . . . on the fact that (her) only option was to change locations and the job that (she) had performed for over seven years--in the College of Arts and Architecture where (she had) worked since 1994."

38. In an email response later that day, Vice Provost Lehrman told Ms. Stoneberg that he was "disappointed" that Mr. Kesler was "less than enthusiastic" about moving Marshall (out of the office suite) and promised to speak with him.

39. Despite having made a retaliation complaint directly to Vice Provost Lehrman in June of 2014, and his promise to speak with Mr. Kesler, from that point until she was forced to retire in late October of 2014, Lehrman did not move Marshall from the shared office suite, did not interview Ms. Stoneberg as part of any investigation, and did not provide Ms. Stoneberg with a response of any kind to her complaint.

40. By email dated June 22, 2014, carbon copied to Arts and Architecture Dean Barbara Korner and Vice Provost Lehrman, Ms. Stoneberg complained about being forced to

move and to change her job in retaliation for pursuing her sexual harassment complaint. Specifically, Ms. Stoneberg wrote that after her June 4th meeting with Associate Dean Kesler, "it became very clear that" Mr. Kesler would not be moving Marshall from the shared suite and noted that there were no: "conversation(s) about other possible options to alleviate the situation in my working environment in Borland. . . . I left the meeting feeling that my complaint was not being taken seriously and that I could expect no support from the College. . . . As I stated, I want you to know that my intention was to return to my position in Borland. The current environment makes that impossible. . . . It is difficult for me not to see your actions as a response to my decision to move forward with the sexual harassment complaint."

41. After Ms. Stoneberg was forced to leave her Arts and Architecture office and Programs Coordinator position, and after she complained about it, she was forced to function as an entry-level academic advisor.

42. In early October, after receiving no response or relief following her retaliation complaint and concluding that there was no chance of returning to her Arts and Architecture Programs Coordinator position, and after she instructed her husband that she believed that she would need to leave Penn State, her husband had sought and obtained employment elsewhere and Ms. Stoneberg announced her early retirement from the University.

43. But for the University's retaliation, Ms. Stoneberg would have remained employed by the University until July 1, 2015, her original planned retirement date.

44. As a direct and proximate result of the University's retaliation and constructive discharge, Ms. Stoneberg suffered and continues to suffer damages, including, but not limited to, lost wages and benefits.

CAUSE OF ACTION
TITLE VII OF THE CIVIL RIGHTS ACT – RETALIATION

45. The foregoing paragraphs are realleged and incorporated by reference herein.

46. Ms. Stoneberg's sexual harassment and retaliation complaints were protected by Title VII of the Civil Rights Act.

47. In retaliation for pursuing the sexual harassment complaint, and instead of providing her with a safe and nondiscriminatory workplace, the University forced Ms. Stoneberg to move out of the office she shared with the perpetrator and to leave a job she had mastered and excelled at, and to accept a marked diminution in the conditions and responsibilities of her employment.

48. Ms. Stoneberg's sexual harassment complaint was the direct and proximate cause of the University's retaliation against her.

49. The aforementioned facts and circumstances caused Ms. Stoneberg working conditions to become so intolerable that a reasonable person in the employee's position would have felt compelled to leave their employment.

WHEREFORE, Plaintiff demands judgment against Defendant for violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-2(a)(1), as follows:

a. That Defendant be required to compensate Plaintiff for the full value of wages she would have received had it not been for Defendant's illegal treatment of Plaintiff, with interest;

b. That Defendant be required to provide Plaintiff with front pay;

c. That Defendant be required to compensate Plaintiff for lost benefits, including retirement contributions, through Plaintiff's normal retirement date;

d. That Plaintiff be awarded compensatory damages in an amount to be determined at trial;

e. That Plaintiff be awarded against Defendant the costs and expenses of this litigation, including reasonable attorneys fees; and

f. That Plaintiff be granted such further legal and equitable relief as the Court may deem just and proper.

Respectfully Submitted,

February 28, 2017

s/ Andrew J. Shubin
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